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LATHAM & WATKINS LLP

February 15, 2023

Via ECF:

The Honorable Jennifer H. Rearden
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

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**Re: *Portal Instruments, Inc. v. LEO Pharma A/S*, 1:22-cv-09156-JHR
Joint Status Letter from All Parties**

Dear Judge Rearden,

Pursuant to the Court's February 1, 2023 Notice of Reassignment (Dkt. 37), Plaintiff Portal Instruments, Inc. ("Portal" or "Plaintiff") and Defendant LEO Pharma A/S ("LEO" or "Defendant" and, together with Portal, the "Parties") hereby submit this joint letter updating the Court on the status of this matter.

1. The names of counsel and current contact information:

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Attorneys for Defendant LEO Pharma A/S

Attorneys for Plaintiff Portal Instruments, Inc.

LATHAM & WATKINS^{LLP}**2. A brief statement of the nature of the claims and principal defenses:**

Plaintiff and Defendant entered into the Collaboration and License Agreement (the “Agreement”) on December 3, 2019.

Plaintiff’s asserted claims that remain to be tried are:

- Breach of contract due to LEO’s failure to make a \$1.5 million quarterly installment payment due on October 1, 2021 (Count I of Plaintiff’s Complaint, ECF No. 30);
- Breach of contract due to LEO’s failure to make a \$1 million milestone payment required by Section 7.3 of the Agreement (Count II of Plaintiff’s Complaint);
- Breach of the implied covenant of good faith and fair due to LEO’s manipulation of pharmacokinetic study results in order to avoid liability for a \$1 million milestone payment (Count III of Plaintiff’s Complaint)

Defendant’s principal defenses are:

- Under the Agreement, LEO had no obligation to make the \$1.5 million quarterly installment payment in October 2021 because it had elected to cease development in September 2021.
- Under the Agreement, LEO had no obligation to make the \$1 million milestone payment because the triggering event for that payment never occurred.
- LEO acted in accordance with its rights under the Agreement and neither manipulated the pharmacokinetic study nor acted in bad faith.

3. Basis for jurisdiction and venue:

The court has subject-matter jurisdiction pursuant to 28 U.S.C. 1332(a)(2) because the action is brought by a citizen of a state within the United States against a citizen of a foreign state, and the matter in controversy exceeds the sum or value of \$75,000 exclusive of costs and interests. Plaintiff Portal is a corporation that is incorporated in Delaware and has its principal place of business in Cambridge, Massachusetts. Defendant

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LEO is a corporation organized under the laws of the Kingdom of Denmark and has its principal business in Bellerup, Denmark.

Venue is proper in this county pursuant to 28 U.S.C. 1391(c)(2) because this action arises out of a contract pursuant to which the parties have agreed to submit to the laws and jurisdiction of the State of New York under Section 19.11(c) of the Agreement.

4. A statement of all existing deadlines, due dates, and/or cut-off dates:

- Deadline to join additional parties, file amended pleadings, and complete initial disclosures: 12/28/2022
- Deadline to serve requests for production of documents: 1/11/2023
- Deadline for parties to substantially complete production in response to all document requests: 3/3/2023
- Deadline to submit a joint status letter: 3/6/2023
- Deadline for parties to complete productions in response to all document requests and to serve interrogatories and requests to admit: 3/27/2023
- Deadline for parties to meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions: 4/4/2023
- Deadline for parties to complete all fact discovery and depositions: 5/4/2023
- Deadline to submit a joint status letter: 5/18/2023
- Deadline for parties to complete all expert discovery: 6/19/2023
- Deadline for a party wishing to file a summary judgment or other dispositive motion to file a pre-motion letter: 6/28/2023
- Pre-motion conference: 7/12/2023 (ECF No. 28)

5. A statement of any previously scheduled conferences or arguments with the Court that have not yet occurred, and the matters that were to be addressed:

A pre-motion conference was held on January 4, 2023, before Judge Schofield regarding LEO's proposed Motion to Dismiss.

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6. A brief description of any outstanding motions, including the date such motions were filed and the nature of the relief sought:

Defendant's Motion to Dismiss Count I of the Complaint was filed on January 20, 2023 (ECF No. 34-35). Plaintiff's Opposition to Defendant's Motion to Dismiss was filed on February 3, 2023 (ECF No. 39). Defendant's Reply in Support of its Motion to Dismiss was filed on February 10, 2023 (ECF No. 40).

7. A statement and description of any pending appeals:

None.

8. A detailed statement of all discovery to date, including the number of depositions taken by each party and any remaining discovery that is essential in order for the parties to engage in meaningful settlement negotiations:

Defendant served Plaintiff with its first set of requests for production on January 11, 2023, and Plaintiff served Defendant with its objections and responses on February 10, 2023.

Plaintiff served Defendant with its first set of interrogatories, requests for admission and requests for production on January 17, 2023, and Defendant's objections and responses are due February 16, 2023.

The parties have not yet taken depositions or begun expert discovery.

9. A brief description of the status of prior settlement discussions, without disclosing exact offers and demands:

The parties have engaged in settlement discussions prior to the filing of the complaint and continue to engage in such discussions. The parties believe that an expeditious ruling on the pending Motion to Dismiss would help them reach a settlement.

10. A statement of whether the parties have discussed employing alternative dispute resolution mechanisms and whether the parties believe that (a) a settlement conference before a Magistrate Judge; (b) participation in the District's Mediation Program; and/or (c) the retention of a private mediator would be productive and, if

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so, when (e.g., within the next 60 days, after the deposition of the plaintiff is completed, at the close of fact discovery, etc.):

The parties have discussed alternative dispute resolution mechanisms and believe that at this time they would not be beneficial.

11. An estimate of the length of trial:

The parties estimate that the trial will take 2 days.

12. Any other information that the parties believe may assist the Court in advancing the case, including, but not limited to, a description of any dispositive or novel issue raised by the case.

None.

Respectfully submitted,

/s/ Matthew Salerno

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¹ This electronic signature is used with consent in accordance with Rule 8.5(b) of the Court's Electronic Case Filing Rules and Instructions.